

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201808784	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/16/2018 11:45 PM	Location of Incident: 1418 Nostrand Avenue; En route to the 67th Precinct stationhouse	Precinct: 67	18 Mo. SOL 4/16/2020	EO SOL 12/1/2020	
Date/Time CV Reported Tue, 10/23/2018 10:57 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/23/2018 10:57 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			067 PCT
2. An officer			067 PCT
3. POM Matthew Sabella	03528	955429	067 PCT
4. POM Matthew Kelly	09342	960754	067 PCT
5. POM Christian Cayenne	02135	954620	PBBS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Goldman	24217	945770	067 PCT
2. POF Aleksandra Chorazewicz	1863	954641	067 PCT
3. POM Besnik Gjonbalaj	07172	964527	067 PCT
4. POM Vito Polisenio	18478	951070	067 PCT
5. POM Robert Felts	15294	945712	067 PCT
6. SGT Brian Alexander	03185	948599	PBBS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Sabella	Abuse: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella stopped § 87(2)(b)	
B.POM Christian Cayenne	Abuse: At 1418 Nostrand Avenue, Police Officer Christian Cayenne stopped § 87(2)(b)	
C. An officer	Discourtesy: At 1418 Nostrand Avenue, in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
D.POM Matthew Sabella	Discourtesy: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella spoke discourteously to § 87(2)(b)	
E.POM Matthew Sabella	Force: At 1418 Nostrand Avenue in Brooklyn, Police Officer Matthew Sabella used physical force against § 87(2)(b)	
F. Officers	Force: At 1418 Nostrand Avenue, in Brooklyn, officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G.POM Matthew Sabella	Abuse: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella refused to provide his name to § 87(2)(b)	
H. An officer	Abuse: At 1418 Nostrand Avenue, in Brooklyn, an officer refused to provide his shield number to § 87(2)(b)	
I. An officer	Discourtesy: At 1418 Nostrand Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
J.POM Matthew Kelly	Discourtesy: En route to the 67th Precinct stationhouse, Police Officer Matthew Kelly spoke discourteously to § 87(2)(b)	

Case Summary

On October 23, 2019, § 87(2)(b) filed the following complaint with the CCRB by phone.

On October 16, 2019, at approximately 11:45 p.m., § 87(2)(b) was walking with his wife, § 87(2)(b) and his two friends, § 87(2)(b) and § 87(2)(b) got into a brief argument with § 87(2)(b) who had been arguing with an unknown woman on the street. § 87(2)(b) then went inside a store, and § 87(2)(b) remained outside with § 87(2)(b). While outside, two police cars drove up to § 87(2)(b) and two officers, PO Matthew Sabella of the 67th precinct, and PO Christian Cayenne of Patrol Borough Brooklyn South, exited from the vehicle and approached § 87(2)(b). The officers began to pull an unidentified object out of their belt and told § 87(2)(b) to “hold on” (**Allegation A and B: Abuse of Authority; § 87(2)(g)**). This caused § 87(2)(b) to fear for this life, and he began to run away. He heard an officer yell “Get that motherfucker” as PO Sabella and PO Cayenne began pursued him, along with additional units (**Allegation C: Discourtesy; § 87(2)(g)**).

§ 87(2)(b) stopped running and turned around, where he observed PO Sabella running towards him allegedly yelling “Get on the fucking ground” (**Allegation D: Discourtesy; § 87(2)(g)**). PO Sabella then tackled § 87(2)(b) to the ground and told officers to “get his ass” (**Allegation E: Force; § 87(2)(g) and Allegation C, cont.**). PO Sabella and other unidentified officers allegedly began to punch and kick § 87(2)(b) while he was on the ground (**Allegation F: Force; § 87(2)(g)**). § 87(2)(b) was then handcuffed and stood up, where he asked PO Sabella for his name and shield number, he allegedly refused to provide (**Allegation G and H: Abuse of Authority; § 87(2)(g)**). § 87(2)(b) was put into a police vehicle by PO Matthew Kelly, also of the 67th Precinct, for transportation to the 67th Precinct stationhouse in Brooklyn. Prior to being placed in the vehicle, unidentified officers allegedly commanded § 87(2)(b) to give his “fucking hands and arms” (**Allegation I: Discourtesy; § 87(2)(g)**). Additionally, an officer told § 87(2)(b) to “shut the fuck up, bro” (**Allegation I, cont.**).

As § 87(2)(b) was being transported to the stationhouse, PO Kelly said to § 87(2)(b) “You want to sit here and say all this shit, bro. You know? We’re all pieces of shit. We’re trying to help you out” (**Allegation J: Discourtesy; § 87(2)(g)**). He later told § 87(2)(b) “Because I’m trying to make it not as fucking bad...if you want to keep acting up like this, my boss is going to send you to booking on a discon summons, like a jackass” (**Allegation J, cont.**). § 87(2)(b) was released from the stationhouse with two disorderly conduct summonses for running in the street and for causing a crowd to form [BR01 and BR02, respectively].

Body-worn camera (BWC) footage was obtained for PO David Goldman, PO Aleksandra Chorazewicz, PO Besnik Gjonbalaj, PO Vito Polisenio, and PO Robert Felts [BR03 through BR11, respectively]. Multiple attempts were made to contact § 87(2)(b) and § 87(2)(b) however the investigation was unable to obtain a sworn statement from them [BR12; please see detailed IA#145].

Findings and Recommendations

Allegation (A): Abuse of Authority: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella stopped § 87(2)(b)

Allegation (B): Abuse of Authority: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Christian Cayenne stopped § 87(2)(b)

It is undisputed that PO Sabella and PO Cayenne stopped § 87(2)(b)

On October 16, 2019, at 11:45 p.m., a female 911 caller reported that at 179 Linden Boulevard, a male of unknown description was attacking a female who screamed, “He has my bag,” while pulling said female down the street towards Rogers Avenue [BR13]. It is undisputed that PO Sabella, PO Cayenne, and Sgt. Alexander all responded to the scene.

§ 87(2)(b) testified that he and § 87(2)(b) were standing in front of 227 Linden Boulevard when two unmarked vehicles and one marked vehicle pulled up beside them. PO Cayenne exited an unmarked vehicle and approached the group. PO Cayenne stood within five feet of § 87(2)(b) and told him to, “Hold on,” while moving his hands towards his waistband. § 87(2)(b) observed PO Cayenne pulling an object from his waistband, and began running away before PO Cayenne fully removed said object from his waistband [BR14].

PO Sabella, PO Cayenne, and Sgt. Alexander inconsistently testified to the details of the robbery call, in addition to inconsistently testifying as to why they suspected § 87(2)(b) to be the perpetrator.

PO Sabella testified the officers responded to a robbery in progress near Linden Boulevard and Nostrand Avenue, in which a woman claimed to be robbed. PO Sabella did not recall the description of the perpetrator; however, upon reviewing the incident Event [BR13], he testified that despite the comments listing a “male of unknown description,” the officers identified § 87(2)(b) because an unidentified civilian, who stood across the street from § 87(2)(b) physically pointed out § 87(2)(b) to the officers. This point out, in tandem with § 87(2)(b)'s nervous demeanor and pacing, led the officers to stop § 87(2)(b). PO Sabella could not say for how long the officers observed § 87(2)(b) before approaching him. § 87(2)(b) stood alone in front of the location. PO Sabella then told § 87(2)(b) “Police—don’t move!” and § 87(2)(b) immediately ran away [BR15].

PO Cayenne testified that a third-party caller specified a black male individual was robbing a female individual at the location. No civilian on scene identified § 87(2)(b) as the perpetrator of the robbery; however, upon responding to the scene, PO Cayenne observed § 87(2)(b) and a female individual arguing in front of the building from inside his vehicle approximately ten to fifteen feet away. The female individual then entered the building, and PO Cayenne approached § 87(2)(b) because he matched the described race and gender of the perpetrator. PO Cayenne identified himself as a police officer to § 87(2)(b) and stated the officers received a robbery call while asking him to, “Hold on.” § 87(2)(b) did not respond to PO Cayenne’s statement and then began running away [BR16].

Sgt. Alexander testified that, upon reviewing the incident Event [BR13], he recalled the robbery call details as a male attacking a female on Rogers Avenue. Sgt. Alexander did not recall a civilian pointing out § 87(2)(b) and he was not sure whether any other civilians were present on scene. When Sgt. Alexander responded to the location, he observed two marked vehicles attempt to stop § 87(2)(b). Officers pulled their vehicle alongside § 87(2)(b) asked him to stop, and § 87(2)(b) ran away. Sgt. Alexander denied any involvement in the decision to stop § 87(2)(b) and did not recall whether another supervisor was on scene at the onset of § 87(2)(b)'s stop [BR17].

BWC footage acquired by the investigation begins after § 87(2)(b) is placed in handcuffs, and therefore does not capture the events leading up to the stop of § 87(2)(b) [BR 3 – 11].

People v. De Bour, 40 N.Y.2d 210 (1976), ruled that, “Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the CPL authorizes a forcible stop and detention of that person.” [BR18]

People v. § 87(2)(b), 6 N.Y.3d 496, citing Florida v. J. L., 529 U.S. 266 (2006), ruled that as uncorroborated hearsay, an anonymous 911 call can only give reasonable suspicion when the tipster’s veracity and basis of knowledge are verifiable. The tip must be descriptively specific to a determinate individual and an officer “must obtain additional information or make additional observations of suspicious conduct sufficient to provide reasonable suspicion of criminal behavior” to conduct a stop [BR19].

While the circumstances of § 87(2)(b)’s stop remain in dispute, the officers’ reasonable basis for suspecting him of committing the alleged robbery is not. The officers responded to a robbery call with little specific detail and no description other than the gender of the parties involved. The officers arrived on scene and observed § 87(2)(b) near the location, from an undetermined distance and at night, possibly in the presence of other civilians, or possibly alone. Furthermore, PO Cayenne contradicted PO Sabella’s assertion that a civilian on scene identified § 87(2)(b) as the perpetrator of the robbery. Given their inconsistent and contradictory testimony, the investigation did not credit the officers’ basis for suspecting § 87(2)(b) as the perpetrator of a robbery.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: At 1418 Nostrand Avenue, in Brooklyn, an officer spoke discourteously to § 87(2)(b)

Allegation (D) Discourtesy: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella spoke discourteously to § 87(2)(b)

Allegation (E) Force: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella used physical force against § 87(2)(b)

Allegation (F) Force: At 1418 Nostrand Avenue, in Brooklyn, officers used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), it is undisputed that PO Sabella forcibly took § 87(2)(b) down. § 87(2)(b) testified that as he was running away from the officers, three police vehicles surrounded him within one foot, leading him to believe that they were attempting to hit him [BR14]. He stated he avoided the vehicles and went onto the sidewalk. As he was running down Nostrand Avenue, he heard an officer yell, “Get that motherfucker.” When § 87(2)(b) was approximately halfway down the sidewalk, he stopped running, realizing he had done nothing wrong. He raised both of his arms and turned, where he observed PO Sabella running towards him. PO Sabella yelled, “Get on the fucking ground”, lowered his right shoulder, and ran into § 87(2)(b) tackling him to the ground. § 87(2)(b) landed on the left side of his body, and his face scraped against the sidewalk, resulting in an abrasion on his left cheek. PO Sabella then began to

punch § 87(2)(b) on his right cheek, calling him a “goddamn dirtbag” and telling the other officers to “get his ass”. More than five officers began to kick § 87(2)(b) in the legs, stomach, and face more than seven times. § 87(2)(b) did not observe any physical force used against § 87(2)(b) but was informed by her friend Kenny that officers were “beating” him [BR20]. When she arrived to where § 87(2)(b) was handcuffed, she heard him yell at the officers “You just punched me!”

PO Sabella testified that he drove down Nostrand Avenue when § 87(2)(b) took off running [BR15]. He did not issue any commands over the loudspeaker while he drove after § 87(2)(b). He did not say “Get that motherfucker” or tell § 87(2)(b) to “Get on the fucking ground.” He did not hear any officer make these statements. PO Sabella exited the vehicle on the corner of Nostrand Avenue and Martense Avenue and pursued him on foot. He caught up to § 87(2)(b) and tackled him from behind. § 87(2)(b) then turned and extended his arm towards PO Sabella’s neck. The momentum of these actions caused PO Sabella and § 87(2)(b) to fall to the ground, with § 87(2)(b)’s body initially falling on PO Sabella’s pinky, causing it to fracture. He rolled § 87(2)(b) off of him, and attempted to handcuff him, but § 87(2)(b) kept his hands underneath his body.

PO Cayenne, Sgt. Alexander, and PO Kelly all denied saying “get that motherfucker” and did not hear any officer make this statement [BR16, BR17, and BR21, respectively]. They did not hear PO Sabella tell § 87(2)(b) to “get on the fucking ground”, call him “a goddamn dirtbag”, or tell officers to “get his ass”. They did not hear any officer make these statements and denied making these statements themselves. No officer observed PO Sabella take § 87(2)(b) to the ground. BWC footage acquired by the investigation begins after § 87(2)(b) is placed in handcuffs, and therefore does not show the takedown or any events prior [BR03 through BR11]. The footage does not capture any officer making the above-mentioned statements; however, it is unclear how late into the incident the officers activated their body-cameras.

As per Patrol Guide Procedure 221-01, a member of service may use force when it is reasonable to place a person in custody or to prevent escape from custody [BR22].

§ 87(2)(g)

Allegation (G) Abuse of Authority: At 1418 Nostrand Avenue, in Brooklyn, Police Officer Matthew Sabella refused to provide his name to § 87(2)(b)

Allegation (H) Abuse of Authority: At 1418 Nostrand Avenue, in Brooklyn, an officer refused to provide his shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) testified that once he was handcuffed and helped off the ground, he asked PO Sabella for his name and shield number, which PO Sabella ignored [BR14]. He stated that § 87(2)(b) was in the vicinity while he made this request, however, § 87(2)(b) testified that she did not hear any civilian asking for an officer's name or shield number [BR20].

PO Sabella denied refusing to provide his information to § 87(2)(b) and did not hear any other officer do this [BR15]. PO Kelly stated that § 87(2)(b) requested his information on scene, which he provided [BR21]. He did not hear § 87(2)(b) ask for any other officer's information. PO Cayenne and Sgt. Alexander testified that they did not hear PO Sabella refuse to provide his information to § 87(2)(b) [BR16 and BR17, respectively]. Footage from PO Chorazewicz's BWC showed § 87(2)(b) asking, "What's your name, bro?", to an officer off screen, which § 87(2)(b) identifies as the officer who punched him [BR09]. No name is provided in response, but it is unclear which officer this request was made to.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (I) Discourtesy: At 1418 Nostrand Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b)

While BWC footage captured multiple instances of an officer using discourteous language towards § 87(2)(b) the investigation could not determine the identity of said officer(s).

Footage from PO Kelly's BWC captured an unidentified male voice at 00:04 minutes saying, "Give me your fucking hands" and at 00:14 minutes saying, "Give me your fucking arm" [BR04]. PO Kelly denied ordering § 87(2)(b) to "give me your fucking hands" [BR21]. These statements were also captured by PO Chorazewicz's and PO Gjonbalaj's BWC [BR05 and BR06, respectively]. PO Polisenio's BWC also captured an unidentified male officer telling § 87(2)(b) "Shut the fuck up, bro!" [BR07] PO Sabella, PO Cayenne, Sgt. Alexander, and PO Kelly all denied making these statements and stated that they did not hear any officer make these statements [BR15, BR16, BR17, and BR21, respectively]. PO Kelly and PO Sabella were both shown PO Polisenio's BWC footage, but could not identify the officer who told § 87(2)(b) to "shut the fuck up."

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (J): En route to the 67th Precinct stationhouse, Police Officer Matthew Kelly spoke discourteously to § 87(2)(b)

It is undisputed that PO Kelly used discourteous language towards § 87(2)(b)

PO Felt's BWC captured multiple instances of PO Kelly using discourteous language while § 87(2)(b) was in the backseat of the police vehicle [BR11]. At 01:44 minutes, PO Kelly

tells § 87(2)(b) “You want to sit here and say all this shit, bro. You know? We’re all pieces of shit. We’re trying to help you out.” At 02:03 minutes, PO Kelly says to § 87(2)(b) “Because I’m trying to make it not as fucking bad...if you want to keep acting up like this, my boss is going to send you to booking on a discon summons, like a jackass.” Upon viewing the footage, PO Kelly explained that the situation was “extremely tense” and that he used the profanity as a method to explain the next steps of the process to § 87(2)(b) [BR21]. He clarified that he did not intend to call § 87(2)(b) a “jackass”, but that in an attempt to explain the process, it was “just the way it came out.”

Patrol Guide Procedure 203-09 states the members of service must interact with members of the public in a professional and courteous manner [BR23].

In DCT-DAO Case #2019-17276, it was ruled by the Honorable Paul Gamble, the Assistant Deputy Commissioner of Trials, that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation [BR24].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR25].
- PO Sabella has been a member of service for six years and has been a subject in three CCRB complaints and eight allegations, none of which have been substantiated. § 87(2)(g)
- PO Cayenne has been a member of service for six years and has been a subject in eight CCRB complaints and 30 allegations, none of which were substantiated. § 87(2)(g)
- PO Kelly has been a member of service for three years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 14, 2019, the New York City Office of the Comptroller’s has no record of a notice of claim in regards to this complaint [BR26].
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date